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REMARKS

This response is intended as a full and complete response to the final Office Action mailed June 30, 2006. In the Office Action, the Examiner notes that claims 1-19 and 23-53 are pending and rejected.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103. Thus, Applicants believe that all of these claims are now in allowable form.

Objections

Claim 23

Claim 23 is objected to because "the status identifier is improper." The status identifier has been changed to "previously presented" and the previously presented claim incorporates the May 18, 2006 amendment of claim 23 to be dependent upon claim 1 rather than upon canceled claim 22.

Rejection under 35 U.S.C. §103 of Claims 1-10, 14-19, and 23-32

The Examiner has rejected claims 1-10, 14-19, and 23-32 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,600,573 to Hendricks et al. (Hendricks) in view of U.S. Patent 5,956,716 to Kenner (Kenner) and US 2002/0038308 A1 to Cappi (Cappi). Applicants respectfully traverse the Examiner's rejection and particularly the Examiner's characterization of Cappi.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. The Hendricks Kenner and Cappi references, alone or in combination, fail to teach or suggest Applicants' invention as a whole.

Applicants' independent claim 1 recites:

> 1. A system for finding and retrieving programming from remote sources in a distributed digital communication network, comprising:
> an aggregator, comprising:
> a request and results processing server,
> a search engine server coupled to the request and results processing server, wherein the search engine server, comprises:

a search engine processor;

a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network automatically and retrieves programming information for programs not indexed on the aggregator;

a search results processor coupled to the search engine processor; and

a replicated content database; and

a content acquisition server coupled to the request and results processing server, wherein the request and results processing server receives a request for a program, the search engine server searches the remote sources for the program, and the content acquisition server receives the program from one of the remote sources.

The Hendricks reference discloses an operations center including a system controller, a holder, a computer assisted packaging system that receives video on demand requests and determines whether the program is available for distribution and whether a link is available, and a receiver connected to the holder for receiving signals from a satellite or another remote source. The Hendricks reference fails to teach or suggest at least Applicants' claimed aggregator, comprising at least a search engine server comprising a remote content crawler coupled to a search engine processor, wherein the remote content crawler periodically crawls a communications network automatically and retrieves programming information for programs not indexed on the aggregator.

The Kenner and Cappi references fail to bridge the substantial gap between the Hendricks reference and Applicants' claimed invention. In particular, the Kenner reference discloses using a primary index manager (PIM) to process user requests for video clips stored locally or remotely via a local search and retrieval unit (SRU). Nowhere in the Kenner reference is there any teaching or suggestion of Applicants' claimed aggregator, comprising at least a search engine server comprising a remote content crawler coupled to a search engine processor, wherein the remote content crawler periodically crawls a communications network automatically and retrieves programming information for programs not indexed on the aggregator.

Cappi does not teach or suggest what is missing from Hendricks and Kenner as described above. The Examiner alleges that Cappi teaches an "automated system". The Applicants respectfully submit that the Examiner has mischaracterized Cappi

despite Cappi teaching directly contrary to the Examiner's assertion. First, Cappi only teaches retrieving data in response to a user query or request. (See Cappi, para. [0041].) In contrast, the Applicants' invention teaches that the remote content crawler periodically crawls a communication network automatically and retrieves programming information for programs not indexed on the aggregator. Therefore, the data retrieval system is not a remote content crawler as taught by the Applicants' invention.

Furthermore, the alleged citation to Cappi by the Examiner of an "automated system" is irrelevant because that reference only refers to content integration (i.e. combining various databases into one platform) and not to the data retrieval. Even if this portion is interpreted broadly, the Examiner mis-characterizes the integration as "automated" because Cappi specifically teaches that the system "eventually will semi-automatically perform all of the steps of integration . . . it is initially necessary for the descriptions of data elements to be **manually** expanded, edited and entered by a user of the system." (See Cappi, para. [0087], emphasis added.) Therefore, Cappi clearly fails to teach, show or suggest the Applicants' claimed aggregator, comprising at least a search engine server comprising a remote content crawler coupled to a search engine processor, wherein the remote content crawler periodically crawls a communications network automatically and retrieves programming information for programs not indexed on the aggregator. Accordingly, any attempted combination of the Hendricks and Kenner references with any other additional references, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim.

Thus, Hendricks, Kenner and Cappi, alone or in combination, fail to disclose the invention as a whole. As such, Applicants submit that independent claim 1 is not obvious and fully satisfies the requirements of 35 U.S.C. §103 and is patentable thereunder. Furthermore, claims 2-10, 14-19, and 23-32 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. As such, and for at least the same reasons as discussed above, Applicants submit that these dependent claims are also not obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 11-13

The Examiner has rejected claims 11-13 under 35 U.S.C. §103(a) as being unpatentable over Hendricks, Kenner and Cappi as applied to claim 10 above, and further in view of Whitman et al. U.S. Patent 6,772,150 (Whitman) and Grooters U.S. Patent 6,839,705 (Grooters). Applicants respectfully traverse the rejection.

Claims 11-13 depend directly or indirectly from independent claim 1 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Hendricks, Kenner and Cappi references fail to teach or suggest Applicants' invention as a whole, as recited in claim 1. Whitman and Grooters also do not teach or suggest at least "a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network automatically and retrieves programming information for programs not indexed on the aggregator." Accordingly, any attempted combination of the Hendricks, Kenner and Cappi references with the Whitman and Grooters references, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because they all lack the feature of periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 11-13 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 33, 39-42, 46, 47, 50, 51, and 53

The Examiner has rejected claims 33, 39-42, 46, 47, 50, 51, and 53 under 35 U.S.C. §103(a) as being unpatentable over Kenner in view of Cappi. Applicants respectfully traverse the rejection.

Applicants' independent claims 33 and 50 recite:

33. A method using a video and multimedia aggregator for finding and

retrieving program content from remote sources in a distributed digital communication network, comprising:

receiving a program content search request from a user terminal in the network;

searching a local content database based on the program content search request;

searching one or more remote content databases based on the program content search request;

identifying one or more programs based on the searches; and

acquiring one or more of the one or more identified programs from one or more of the local content database and the remote databases;

periodically crawling the communications network automatically; and

retrieving programming information for programs not indexed on the aggregator.

50. A video and multimedia aggregator for use in a distributed digital communication network, comprising:

means for requesting a search for program content;

means for processing the search request;

means for searching local and remote sources for the program content;

means for acquiring metadata related to the program content;

means for displaying the acquired metadata;

means for receiving a program content download request;

means for acquiring the program content in the download request;

means for displaying the acquired program content at a user terminal;

means for billing a user of the user terminal; and

means for periodically crawling the communications network automatically, thereby retrieving programming information for programs not indexed on the aggregator.

The Kenner and Cappi references alone or in combination fail to teach or suggest Applicants' invention as a whole.

In particular, the Kenner reference discloses a video clip storage and retrieval system whereby video clips, stored locally and/or at a more remote location, can be requested and retrieved by a user at the user's multimedia terminal.

Nowhere in the Kenner reference is there teaching or suggestion of, "periodically crawling the communications network automatically; and retrieving programming information for programs not indexed on the aggregator" as explicitly claimed in claim 33. Moreover, the Kenner reference does not teach or suggest, "means for periodically

crawling the communications network automatically, thereby retrieving programming information for programs not indexed on the aggregator" as explicitly claimed in claim 50.

Cappi does not teach or suggest what is missing from Kenner as described above. In particular, for the reasons discussed above with regard to the Examiner's characterization of the teachings of Cappi, nowhere in Cappi is there any teaching or suggestion of the feature of periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

As such, Applicants submit that independent claims 33 and 50 satisfy the requirements of 35 U.S.C. §103 and are patentable Kenner in view of Cappi. Furthermore, claims 39-42, 46, 47, 51, and 53 depend directly or indirectly from independent claims 33 and 50 and recite additional limitations thereof. Accordingly, for at least the same reasons as discussed above, Applicants submit that these dependent claim fully satisfy the requirements of 35 U.S.C. §103 and are patentable over Kenner in view of Cappi.

Rejection under 35 U.S.C. §103 of Claims 34-36

The Examiner has rejected claims 34-36 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Cappi as applied to claim 33 above, and further in view of Whitman. Applicants respectfully traverse the rejection.

Claims 34-36 depend directly or indirectly from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner and Cappi references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Whitman also does not teach or suggest at least "a remote content crawler coupled to the search engine processor, wherein the remote content crawler periodically crawls the communications network automatically and retrieves programming information for programs not indexed on the aggregator." Accordingly, any attempted combination of the Kenner and Cappi references with the Whitman reference, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim because Whitman lacks the

feature of periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 34-36 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 37 and 38

The Examiner has rejected claims 37 and 38 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Cappi and Whitman as applied to claim 35 above, and further in view of Nelson et al. U.S. Patent 6,243,713 (Nelson). Applicants respectfully traverse the rejection.

Claims 37 and 38 depend indirectly from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner, Cappi and Whitman references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Nelson does not teach or suggest the gap between Kenner and Whitman as stated above. Accordingly, any attempted combination of the Kenner, Cappi and Whitman references with Nelson, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 37 and 38 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 43 and 44

The Examiner has rejected claims 43 and 44 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Cappi as applied to claim 33 above, and further in view of Brin et al., The Anatomy of a Large-Scale Hypertextual Web Search Engine, supplied by applicant on August 3, 2001 (Brin). Applicants respectfully traverse the rejection.

Claims 43 and 44 depend directly or indirectly from independent claim 33 and recite additional limitations thereof. Moreover, for at least the reasons discussed

above, the Kenner and Cappi references fails to teach or suggest Applicants' invention as a whole, as recited in claim 33. Brin does not teach or suggest the limitations of claim 33 such as periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

Accordingly, any attempted combination of the Kenner and Cappi references with Brin, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claims 43 and 44 are also not obvious and is patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claim 45

The Examiner has rejected claim 45 under 35 U.S.C. §103(a) as being unpatentable over Kenner, Cappi and Brin as applied to claim 44 above, and further in view of Grooters. Applicants respectfully traverse the rejection.

Claim 45 depends indirectly from independent claim 33 and recites additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner, Cappi and Brin references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Grooters also does not teach or suggest the limitations such as periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

Accordingly, any attempted combination of the Kenner, Cappi and Brin references with Grooters, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claim 45 is also not obvious and is patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claim 48

The Examiner has rejected claim 48 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Cappi as applied to claim 46 above, and further in view of Grooters. Applicants respectfully traverse the rejection.

Claim 48 depends indirectly from independent claim 33 and recites additional limitations thereof. Moreover, for at least the reasons discussed above, the Kenner and Cappi references fail to teach or suggest Applicants' invention as a whole, as recited in claim 33. Grooters also does not teach or suggest the limitations such as periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

Accordingly, any attempted combination of the Kenner and Cappi references with Grooters reference, in a rejection against the dependent claims, would still result in a gap in the combined teachings in regards to the independent claim. As such, Applicants submit that dependent claim 48 is also not obvious and is patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that this rejection under 35 U.S.C. §103(a) be withdrawn.

Rejection under 35 U.S.C. §103 of Claims 49 and 52

The Examiner has rejected claims 49 and 52 under 35 U.S.C. §103(a) as being unpatentable over Kenner and Cappi as applied to claim 46 above, and further in view of Nelson. Applicants respectfully traverse the rejection.

As stated above, Kenner and Cappi do not teach or suggest periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator.

Nelson discloses multimedia document retrieval by retrieving multimedia queries of different data types. Nelson also does not teach or suggest periodically crawling the communications network automatically and retrieving programming information for programs not indexed on the aggregator. As such, Applicants submit that dependent claims 49 and 52 are also not obvious and are patentable under 35 U.S.C. §103.

Therefore, Applicants respectfully request that the rejection of such claims under 35 U.S.C. §103(a) be withdrawn.

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Official Notices

The Office Action takes numerous Official Notices. Applicants hereby traverse each Official Notice.

Before the Examiner can even assert that the Applicants failed to adequately traverse the Official Notices, the Examiner must have properly established Official Notice. In the instant case, the Examiner failed to properly establish Official Notice.

Under MPEP 2144.03, the board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, but must set forth the rationale on which it relies. In re Lee, 277 F.3d 1338, 1344-45, 61 USPQ2d 1430, 1434-35 (Fed. Cir. 2002). Moreover, there must be some form of evidence in the record to support an assertion of common knowledge. See *Id.* The Examiner's self proclaimed "notoriousness" of various technologies is clearly "conclusory" without supporting evidence and, therefore fails to properly establish Official Notice.

Even if properly established the Applicants adequately traversed the Official Notices, as required under MPEP 2144.03. The Examiner failed to read completely the Applicants traversal to the Official Notices and mischaracterized the Applicants' arguments as simply stating that the use of Official Notices "may not be well known".

Read completely, the Applicants' argument stated "it may not be well known to combine the allegedly well known apparatuses and/or methods with other apparatuses and/or methods recited in the respective claims or in other claims from which the respective claims may depend." (See Response dated May 18, 2006, pp. 22-23, emphasis added.) Similar to *Lee* where the court held that the board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims, here, the Examiner may not rely on conclusory statements when dealing with the combination of allegedly well known apparatuses and/or methods.

Consequently, the Examiner failed to establish a proper Official Notice. Even if the Examiner feels that proper Official Notice was established, the Applicants adequately traversed such a finding by specifically pointing out the supposed errors in the Examiner's action in the previous Response dated May 18, 2006, as required under MPEP 2144.03. As a result, the Examiner is required to support his or her finding with

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AUG 28 2006

adequate evidence as requested by the Applicants for the Examiner to provide references showing these features in the Applicants' Response dated May 18, 2006. Alternatively, the Examiner is required by 37 CFR 1.104(d)(2), to support the finding of what is known in the art by providing an affidavit or declaration setting forth specific factual statements and explanation to support the finding.

CONCLUSION

Thus, Applicants submit that none of the claims presently in the application, are indefinite, anticipated or obvious under the respective provisions of 35 U.S.C. § 103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall or Jimmy Kim at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 8/28/06

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